



THE SECRETARY GENERAL

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Single Market Review Package/Competitiveness Council, 25-26 February 2008

Dear Minister,

We are writing to you in view of the forthcoming discussions on the Single Market Review Package adopted by the Commission on 20 November 2007.

The Single Market is a key tool for realisation of the Lisbon agenda and it is driving economic growth as barriers to the free circulation of people, goods, services and capital are progressively dismantled. With a market which now comprises 30 countries and around 500 million citizens¹, cross-border investment flows of 430 billion euros per annum and 70% of Member States' exports being destined for other EU countries, the benefits from closer integration are undeniable.

In this context, we would like to express our general support for the Commission's plans to ensure that EU policies respond to the rapidly changing and globalised environment and deliver more for citizens and enterprises. This is of paramount importance as far as the Single Market is concerned.

There is still a long way to go before the Single Market functions optimally and citizens and enterprises, especially SMEs, benefit from its advantages to the full. There are still many remaining barriers to the Single Market that represent in total an unfulfilled economic potential of 275 to 350 billion euros².

A well functioning, competitive and innovation-friendly Single Market is essential if Europe wants to make the most of globalisation while safeguarding its welfare standards.

¹ EU Member States plus Norway, Iceland and Liechtenstein.

² BUSINESSEUROPE calculations based on the European Commission report "Steps towards a deeper economic integration: the Internal Market in the 21st century".

Correct and uniform enforcement of existing legislation and standards ensuring fair competition and level playing-field remains one of the most important challenges. Progress should also continue regarding impact assessment, reduction of administrative and tax burden, better communication and consultation of representative stakeholders.

The Commission and Member States have to ensure that new regulatory initiatives, particularly in the fields of energy, environment or social and consumer protection, do not undermine the functioning of the Single Market, the competitiveness of European companies and are accompanied by a rigorous impact assessment which includes a “Single Market compatibility test” and benchmarks of international standards. In this respect, BUSINESSEUROPE is seriously worried about the potential impact of the debate on collective redress and is against the proposed revision of the European Works Council Directive.

The Commission’s Single Market Review Package provides a good basis for reinvigoration of the Single Market but its success will depend greatly on the ability and the ambition of national governments to take up their responsibilities and put in place the necessary resources to turn this rhetoric into reality. In this respect, business urges Member States to define together with the Commission a follow-up action programme to realise these objectives, specifying levels of competence (EU, national, regional or local), tasks, precise timelines and targets.

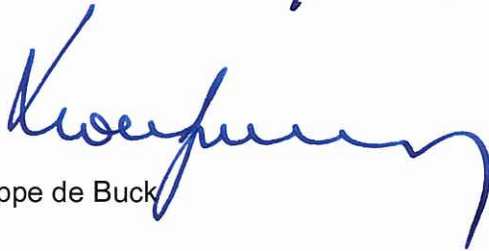
You will find at annex a more detailed assessment of the particulars of the package.

We will continue to play an active role in contributing to the well functioning of the Single Market and remain at your full disposal to discuss our comments further.

I trust you will take into account our views on this important debate.

Yours sincerely,

best regards,



Philippe de Buck

SPECIFIC COMMENTS ON THE SINGLE MARKET REVIEW PACKAGE

MORE EFFECTIVE ENFORCEMENT

BUSINESSEUROPE shares the Commission's view that the success of future Single Market policy depends on the combined capacity of Member States and of the Commission to improve the functioning of the Single Market. BUSINESSEUROPE has reiterated that the Single Market is a shared responsibility, where all parties must fulfil their tasks. Member States have to take greater ownership of the Single Market. The fact that national authorities, irrespective of the level, fail to live up to their responsibilities for the management of the Single Market often results in new obstacles and undermines trust in the Single Market.

We therefore support the Commission's approach of adjusting the focus to give higher priority to correct enforcement. Market integration through legislation should not be the Single Market's primary line of action. There is a need to establish instruments to ensure that legislation works better in practice.

Ensuring timely and correct transposition and administrative implementation of Community legislation including administrative simplification is also crucial to facilitate even and high-quality enforcement. The implementation plan used for the Services Directive is an exemplary case.

To that end, we call upon the Commission and Member States to ensure sufficient allocation of resources to improve enforcement of Single Market rules via for instance effective and homogenous market surveillance, efficient external border control, correct application of the mutual recognition principle and better training of national officials including judges. Initiatives should also be developed to ensure synergies between the Single Market policy and other relevant policies which are important for a well functioning Single Market, particularly competition policy.

We want to underline the importance of ensuring appropriate redress and problem-solving systems. The promotion of alternative out-of-court dispute resolution mechanisms should be given priority since they can contribute to fostering consumer confidence without unnecessarily burdening business and providing transparent, effective and inexpensive redress.

SOLVIT has proven to be a particularly helpful but unfortunately "underused" tool due to a lack of knowledge about the system and its usefulness. Any initiative to remedy this situation, including actions to ensure sufficient resources in the SOLVIT centres, both human and financial, are highly recommended. Also, initiatives to widen the scope of the problem-solving system and to enable the SOLVIT centres to act in a more pro-active manner (to take up "own-initiative" cases) are welcomed.

BUSINESSEUROPE also supports the Commission's intentions to streamline and expedite infringement processes by giving priority to infringement cases which present the greatest risk and widespread impact for citizens and businesses.

BETTER REGULATION

We welcome the objective of ensuring 'more inclusive policy-shaping' and the desire to 'broaden stakeholder involvement'. Systematic impact assessments are of key importance in particular on substantial/far-reaching amendments introduced by the European Parliament and the Council during the legislative process.

However, something important is missing and that is consultation of representative stakeholders earlier and more systematically at the time when an impact assessment is being prepared. In this context, online consultations should not become the predominant way of consulting interested parties. Moreover, it remains crucial that impact assessments are scrutinised by an independent and external body of experts.

A stronger focus on the actual reduction of the administrative burdens on companies must also be guaranteed. Clear and binding reduction targets are key to achieve real progress in this area.

In order to ensure coherence and legal certainty, BUSINESSEUROPE strongly calls for introduction of a "Single Market Compatibility Test" for new proposals at both EU and national levels. This would diminish the barriers caused by unclear legal texts, which are often implemented and interpreted differently, as well as contradictions in Community legislation.

Improved information and data about practical implementation of Single Market rules is also of paramount importance. The Commission should carry out more benchmarking among Member States to analyse better achievements and failures. It should be more open in disclosing information about those Member States which do not fulfil their responsibilities, and promote peer pressure.

SECTORAL APPROACH AND IMPROVED MEASUREMENT OF THE SINGLE MARKET

Shortcomings in the functioning of the Single Market must be appropriately measured and monitored. Priority areas for improvement need to be identified at sector level, by introducing a systematic and integrated approach to monitor market deficiencies.

This approach should make the best use of the experience in monitoring and benchmarking from different Commission Directorates-General, and align the Commission's efforts to better understand priority areas for improvement.

The involvement of national authorities in market monitoring is crucial. Improved cooperation and assistance between national authorities will contribute to this end as well as to ensure harmonised enforcement and implementation of EU regulations. With their collaboration, we would like to see the development of indicators for barriers to competition in different sectors and across countries (similar to the broader OECD Product Market Regulation Indicator).

In this regard, we call upon the Commission also to involve relevant business sectors in identifying concrete obstacles they face in daily practice. SOLVIT and antitrust cases can provide a valuable source of information.

Regarding the monitoring of market performance and efficiency, we find that the use of productivity measures must be refined. For each selected sector, we recommend that the gap between total factor productivity levels in the best performing EU Member State and that in other Member States is evaluated. This would point to where the largest benefits of further liberalisation lie in the Single Market.

We also consider that systematic surveys among businesses must be used to monitor obstacles to cross-border activities in the Single Market.

Finally, transposition deficit indicators by sector could help complete the set of useful monitoring instruments for the promising new approach suggested by the Commission.

EXTERNAL DIMENSION OF THE SINGLE MARKET

BUSINESSEUROPE agrees with the Commission view that globalisation is a formidable source of dynamism and competitiveness and that the Single Market is an asset which should be used as a springboard to meet the challenges of a global world.

Trade liberalisation is correctly identified as the first pillar of the EU's strategy in this area. An ambitious conclusion of the Doha Round and completion of the far-reaching free-trade agreement negotiations launched under Global Europe will be the measure of the EU's success.

Regulatory and standards issues are increasingly determinants for companies' ability to engage internationally, whether through barriers in non-EU countries or through excessive regulatory burden on European firms domestically.

The Commission rightly emphasises different channels to achieve improved regulatory cooperation, equivalence and convergence internationally. Industry has a vision of "one test, one standard, accepted everywhere", which should be the long-term goal. It is also vital that the business community is fully associated with this action to ensure that results enhance competitiveness.

BUSINESSEUROPE cautions, however, that the export of EU regulation and standards per se should not be the core objective of these efforts. In the first place, the design of EU regulation must maintain competitiveness at its heart. Excessive burdens on EU companies will not be compensated for by a gradual international acceptance of EU approaches and first-mover advantages are certainly not guaranteed. Moreover, regulatory cooperation efforts with partner countries will not be successful without a spirit of openness to other approaches.

For this reason, BUSINESSEUROPE is encouraged by the commitment to benchmarking of EU regulation against international best practice particularly with that of EU's main trading partners. This benchmarking should be systematically included in EU impact assessments and the EU should be open to regulatory cooperation arrangements that foster better regulation and cooperation with important trading partners. Likewise, the EU should accept the use of officially recognised international standards for conformity assessment in connection with European legislation.

Nonetheless, EU initiatives to take a lead on a global scale in rule-setting and the development of high quality, science-based international standards for industrial and food products should be encouraged. It is however a precondition for the use of common standards that common regulatory objectives are defined. Therefore we would recommend more focus on establishing bilateral agreements and the setting-up of networks among international regulators.

The EU should remain supportive of free trade, while at the same time providing an adequate level of market surveillance to guard against the import of unsafe products. The Commission however should make sure that these measures are not misused in a protectionist manner. Close cooperation and capacity-building in non-EU countries in this field could combine trade facilitation and consumer protection objectives.

SOCIAL DIMENSION OF THE SINGLE MARKET

BUSINESSEUROPE supports the view that a social dimension will help to improve the functioning of the Single Market, along the lines of the "growth and jobs" strategy.

Since labour market integration is the best safeguard against social exclusion, better utilisation of Europe's labour force potential in rapidly changing societies must be at the core of the Commission's plan for "opportunities, access and solidarity".

To respond to the challenges of globalisation: technological change and evolving social and environmental realities, policy efforts must be geared towards increasing employment rates and at the same time creating the framework conditions for high productivity growth by fostering innovation, education, entrepreneurship and by lowering regulatory barriers on both product and labour markets. Policies aimed at reducing the inequality of opportunities offered to citizens need to avoid at all costs the trade-off between more inclusive labour markets and strong productivity growth.

This can only happen if Europe engages in ambitious reforms towards more flexible labour regulations, enhanced mobility, better training, efficient job-finding assistance, effective and modern tax and benefit systems and contained labour costs, especially for low-skilled workers. To this end, BUSINESSEUROPE recalls the importance of integrating flexicurity in all EU policies.

The new EU social agenda should not run counter these principles. BUSINESSEUROPE is strongly opposed to the proposed revision of the European Works Council Directive.

INNOVATION-DRIVEN SINGLE MARKET

Europe's innovative capacity can be greatly influenced by the quality of the Single Market. A well functioning Single Market provides leverage and an opening for innovative goods, products and services. Coordination of efforts is required at the European level on R&D between SMEs, large firms, research institutes, universities and the new European Institute of Innovation and Technology.

Strong protection of intellectual property including progress towards a more competitive EU patent system in terms of costs and legal certainty is also key for Europe's innovation capacity. Good use of standardisation processes including for services can also help development of better and innovative products, more transparency and a level playing-field.

ALLOWING SMEs TO TAKE FULL ADVANTAGE OF THE OPPORTUNITIES

Real progress should be made in particular in implementation of the "think-small-first principle".

SMEs face a number of obstacles when it comes to fully seizing the opportunities of the Single Market. A further completion of the internal market is therefore key, also to boost SMEs' potential. Of particular relevance to SMEs is the reduction of tax and administrative burden as this currently remains the biggest growth inhibitor. Moreover, application of the mutual recognition principle for non-harmonised goods, correct and uniform implementation of the services directive and creation of the European Private Company Statute are measures that are needed to help enhance SME growth and foster cross-border trade.

In general, BUSINESSEUROPE appreciates the renewed focus the Commission will put on SMEs and the improvement of their business environment through introduction of a proposal for a Small Business Act in 2008, which should set out a comprehensive set of policies and measures. However, it is important to stress that any future initiatives should not disrupt the level playing-field and fair competition in the market.

TRANSPOSITION OF THE SERVICES DIRECTIVE

In time and correct national transposition and implementation of the Services Directive must continue to be a top priority. Only two years are left for transposition and Member States still have a lot of work to do. National governments should cooperate closely with the private sector to move forward with genuine administrative simplification, creation of effective points of single contact which provide information and facilitate completion of formalities, effective enforcement through better administrative cooperation and implementation of interoperable electronic procedures.

SERVICES OF GENERAL INTEREST

BUSINESSEUROPE agrees with the approach taken in the Commission's communication on services of general interest and the decision not to bring forward framework legislation in this field. BUSINESSEUROPE considers that the existing legal framework provides adequate support for development of high-quality, affordable public services in an open and competitive market.

As the new protocol to the Lisbon Treaty repeats as regards the role and responsibility of the EU in this field, services of general interest, including social services of general interest, are essentially a Member-State prerogative, and differ greatly across the EU. At the same time, BUSINESSEUROPE agrees with the Commission's clear statement that services of general interest of an economic nature are subject to Single Market and competition rules and they need to continue to be delivered in conformity with the relevant Community legislation and the case law of the Court of Justice.

CONSUMER PROTECTION POLICY

A balanced EU consumer policy is important for a well-functioning Single Market. Sufficiently protected and confident consumers are key to companies. This is why a fair balance between an adequate level of protection and competitiveness of companies must be sought in policy-making.

We would like to stress that it is a mistake to believe that there are two Single Markets: one for business and one for consumers. The focus should be on one common market that is beneficial to both consumers and business. Consumers should have easy access to goods and services offered throughout the EU. Removal of barriers which still prevent business and consumers from buying or selling across national borders should remain the main objective.

BUSINESSEUROPE has concerns about the following initiatives that could have negative implications in the competitiveness of enterprises and stifle cross-border activities:

- **Harmonisation of national contract laws**

This overly ambitious project continues to lack clear objectives and priorities as to the Commission's plans. BUSINESSEUROPE does not object to the idea of creating a Common Frame of Reference in European Contract Law setting out principles, definitions and model rules of contract law. But we firmly oppose the idea of developing a European civil code or any binding instrument.

- **Collective redress including damage claims for breaches for consumer rights and competition law**

BUSINESSEUROPE is seriously worried about the idea of an EU initiative in this field. Proposals for a more court-oriented approach to enforcement of consumer laws (collective action, etc.) must be treated with extreme care. Business is in favour of appropriate consumer redress but believes that the answer lies not in promoting judicial litigation but rather on improving and reinforcing existing mechanisms, particularly non-judicial mechanisms such as arbitration, mediation, complaint-handling and information schemes and improve existing enforcement mechanisms.

- **Revision of the EU consumer acquis**

The forthcoming legislative proposal on consumer contracts should strike the right balance between the interests at stake, ensure legal certainty and should not result in more burdens for companies, hampering cross-border trade. The Commission should ensure that there are no contradictions between various proposals and that the well-functioning of the Single Market is not at risk. This is particularly importance concerning interaction with Community rules on the applicable law governing contractual obligations (Rome I), e-commerce or financial services.

TAXATION

Due to the fragmentation of the Single Market, companies operating in more than one Member State have to bear considerably higher compliance costs and are exposed to conflicting tax claims resulting in frequent cases of double taxation.

Currently 10% of large companies and an even larger proportion of SMEs do not take part in cross-border trade at all solely because of value-added tax compliance requirements. Uniform invoicing and reporting requirements in combination with a one-stop shop allowing companies to file one VAT return in a single location would give a significant boost to Europe's competitiveness and thereby expand the tax base and increase both employment and revenues.

In addition, many companies face economic double taxation since Member States tax the same net profits without proper coordination and relief measures. It is important to develop a tax structure enabling pan-European businesses to be taxed on their net profit. A system allowing relief for cross-border losses must be introduced.